

STATE OF SOUTH CAROLINA

(Caption of Case)

Application of Kentucky Data Link, Inc. for a
Certificate of Public Convenience and Necessity to
Provide Resold and Facilities-based Local Exchange
and Interchange Telecommunications Services in the
State of South Carolina

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET

NUMBER: 2008 - 16 - C

(Please type or print)

Submitted by: Margaret M. Fox, Esquire

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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

- ☐ Emergency Relief demanded in petition ☐ Request for item to be placed on Commission's Agenda expeditiously
- ☐ Other: _____

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)		
<input type="checkbox"/> Electric	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Letter	<input type="checkbox"/> Request
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certification
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigation
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement
<input type="checkbox"/> Electric/Water/Telecom.	<input type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter
<input type="checkbox"/> Gas	<input type="checkbox"/> Certificate	<input type="checkbox"/> Petition for Rulemaking	<input type="checkbox"/> Response
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery
<input type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition
<input checked="" type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input checked="" type="checkbox"/> Prefiled Testimony	<input type="checkbox"/> Subpoena
<input type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff
<input type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input type="checkbox"/> Other:
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest	
<input type="checkbox"/> Other:	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit	
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report	

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March 17, 2008

Mr. Charles L. A. Terreni
Chief Clerk/Administrator
South Carolina Public Service Commission
Synergy Business Park, The Saluda Building
101 Executive Center Drive
Columbia, South Carolina 29210

Re: Application of Kentucky Data Link, Inc., for a Certificate of Public
Convenience and Necessity to Provide Resold and Facilities-based
Local Exchange and Interexchange Telecommunications Services
in the State of South Carolina
Docket No. 2008-16-C

Dear Mr. Terreni:

Please find enclosed for filing on behalf of the South Carolina Telephone Coalition the Testimony of L. B. Spearman in the above-referenced docket. By copy of this letter and Certificate of Service, all parties of record are being served by U. S. Mail with a copy of Mr. Spearman's Testimony.

Should you have any questions with respect to this filing, please do not hesitate to contact me.

Thank you for your assistance.

Very truly yours,


Margaret M. Fox

Enclosures

cc: Parties of Record

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

Docket No. 2008-16-C

Re: Application of Kentucky Data Link, Inc., for)
a Certificate of Public Convenience and)
Necessity to Provide Resold and Facilities-based)
Local Exchange and Interexchange Telecommu-)
nications Services in the State of South Carolina)
_____)

**TESTIMONY OF
L. B. SPEARMAN**

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is L. B. Spearman. My business address is 1660 Juniper Springs Road, Gilbert, South Carolina 29054.

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. I am Vice President and Chief Regulatory Officer for PBT Telecom, Inc.

Q. PLEASE BRIEFLY OUTLINE YOUR EDUCATION, TRAINING, AND EXPERIENCE IN THE TELEPHONE INDUSTRY.

A. I received a Bachelor of Science Degree in General Business Administration from Lander University in May 1980. I received a Masters Degree from Clemson University in May of 1983. I was employed by the South Carolina Public Service Commission from 1984 until 1988, when I joined PBT.

I am responsible for all regulatory matters of the company. I have served on several South Carolina Telephone Association committees, as well as national committees dealing with telecommunications matters.

Q. FOR WHOM ARE YOU TESTIFYING IN THIS MATTER?

A. I am testifying on behalf of the South Carolina Telephone Coalition ("SCTC"), a coalition of independent local exchange telephone companies ("LECs") organized and doing business under the laws of the State of South Carolina.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to present the SCTC's concerns regarding the Application of Kentucky Data Link, Inc. ("Kentucky Data Link") for authority to provide local exchange and interexchange telecommunications service throughout the State of South Carolina. The SCTC opposes Kentucky Data Link's application as written. The SCTC believes that Kentucky Data Link should be required to set forth with particularity the proposed geographic territory to be served, as opposed to a more general request for "statewide" authority. The SCTC also believes it is inappropriate to permit carriers to provide local exchange telecommunications in certain rural telephone company areas at this time. The SCTC further requests that the Commission take notice of the fact that statewide certification of Kentucky Data Link or any other competitive local exchange carrier does not, in itself, impinge upon the federal rights granted to rural telephone companies and to telecommunications customers in general by the Act. There are specific rights and procedures, in particular those set forth in Section 251(f) of the Act, that must be followed before any competitive local exchange carrier may offer particular services to customers located in rural telephone company areas.

Q. WOULD THE RELIEF GRANTED TO AT&T IN ORDER NO. 96-494 BE APPROPRIATE FOR KENTUCKY DATA LINK?

A. No. In Docket No. 96-073-C, the Commission decided that statewide certification was appropriate for AT&T, provided that AT&T would not provide local service to any customer located within the service area of a rural telephone company without following the specific procedures set forth by the Commission in Order No. 96-494. The Commission held that competition for local services is in the public interest in non-rural areas, but specifically made no finding as to whether competition for local services is in the public interest for the rural areas of South Carolina. The SCTC believes that Kentucky Data Link is not in the same position as AT&T. First, AT&T's application for local service was filed and heard by the Commission before the enactment of amended S.C. Code Ann. § 58-9-280. Section 58-9-280(B) provides that an applicant proposing to furnish local telephone service in the service territory of an incumbent LEC must set forth with particularity the proposed geographic territory to be served. The SCTC respectfully submits that a general application for statewide authority does not meet this requirement. In addition, AT&T has been a facilities-based certificated interexchange carrier ("IXC") in South Carolina for many years. Unlike Kentucky Data Link, AT&T owns substantial facilities and employs numerous people throughout South Carolina. Clearly, the Commission has a long history of regulating AT&T and is, therefore, more familiar with the operations and business practices of AT&T than it is with Kentucky Data Link. AT&T's pervasive presence in South Carolina and the Commission's familiarity with AT&T contributed to the Commission's finding that AT&T has the managerial, financial, and technological ability to provide local service throughout South Carolina.

While the SCTC recognizes that the federal Telecommunications Act of 1996 ("Federal Act") envisions opening up local exchange telecommunications markets to

competition, the Federal Act also contains many provisions designed to protect customers in rural areas. In fact, an overriding policy goal of the Federal Act is to ensure the continuing quality and availability of affordable local exchange telecommunications services to all customers. The SCTC is concerned that the protections and policies embodied in the Federal Act will be obscured, and perhaps circumvented, if new entrants are granted statewide certificates to provide local service, even with the rural customer protections provided by the Commission with respect to AT&T in Order No. 96-494.

Q. IN WHAT WAY IS KENTUCKY DATA LINK'S REQUEST IMPACTED BY THE FEDERAL ACT?

A. The Federal Act empowers states to consider the impact of local competition on rural markets. It does this in several ways, including:

- 1) an initial exemption from interconnection for rural telephone companies;
- 2) a suspension and modification process for certain telephone companies;
- 3) a provision allowing states to require companies to offer service to an entire rural service area; and
- 4) a provision allowing states to designate a single carrier of last resort in a rural area.

Kentucky Data Link has not specified the markets it intends to serve. Kentucky Data Link's request would defeat the market entry process contemplated by the Federal Act by not allowing the South Carolina Public Service Commission ("Commission") to examine the public interest impact of local competition on a market-by-market basis.

Q. WHY IS IT NECESSARY THAT AN APPLICANT SET FORTH WITH PARTICULARITY THE GEOGRAPHIC SERVICE AREA IT PROPOSES TO SERVE?

- A.** The Federal Act imposes on all incumbent LECs the duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the LEC's network for the transmission and routing of telephone exchange service and exchange access. [Federal Act § 251(c)(2).] The Federal Act also provides that incumbent LECs must offer telecommunications service for resale. [Federal Act § 251(c)(4)]. The Federal Act also, however, contains important exemption, suspension and modification provisions for rural telephone companies and small LECs with respect to interconnection, resale, and other requirements. All of these provisions apply to the companies which make up the South Carolina Telephone Coalition. For example, each SCTC Company is exempt from the interconnection requirements of the Federal Act until "such company has received a bona fide request for interconnection, services, or network elements, and . . . the State commission determines . . . that such request is not unduly economically burdensome, is technically feasible, and is consistent with [universal service principles]." [Federal Act § 251(f)(1)(A).] In addition, even after a bona fide request has been received and the commission has determined that the automatic exemption should be lifted, any LEC having less than 2% of the Nation's access lines (herein called a small LEC) may petition the Commission for a suspension or modification of the application of the interconnection requirement. Should the Commission determine that such suspension or modification is necessary to avoid a significant adverse economic impact on users of telecommunications services generally; to avoid imposing a requirement that is unduly economically

burdensome; or to avoid imposing a requirement that is technically infeasible; and is consistent with the public interest, convenience, and necessity, then the Commission must grant such petition to the extent that, and for such duration as the Commission deems appropriate. [Federal Act § 251(f)(2)]. If the Commission were to grant Kentucky Data Link a statewide Certificate to provide local service, the Commission may surrender its ability to ensure continued quality service for rural customers. This would adversely impact the public interest.

Q. HOW SHOULD AN APPLICANT DEFINE ITS PROPOSED SERVICE AREA?

- A.** In order for the Commission to make the appropriate public interest findings as prescribed by the Federal Act, these geographic areas should coincide with the service areas of local exchange telephone companies currently operating in the State. In the case of rural telephone companies, the "service area" should be defined as the rural telephone company's study area.

Q. WHAT OTHER CONCERNS DOES THE SCTC HAVE?

- A.** The SCTC is concerned that, if the Commission grants statewide authority to Kentucky Data Link, some other important provisions of the Federal Act may be overlooked. For example, § 253(f) of the Federal Act allows the State Commission to require a telecommunications company seeking to providing local service in a rural area to meet the requirements of an Eligible Telecommunications Carrier, i.e., essentially to offer basic local services throughout the entire service area for which it seeks certification. This provision is intended to deter "cherry-picking" in rural areas, which could have a devastating effect on the rural LEC's customers, who would probably be forced to pay higher rates as a result. This determination is an important policy decision which must be made by the Commission up front with

respect to rural areas in general and with respect to each particular rural area. Approving Kentucky Data Link's Application without determining or reserving this issue with respect to the rural areas of the State could lead to a situation where Kentucky Data Link "cherry-picks" the most profitable customers throughout the State without any obligation to serve the unprofitable or lower-profit-margin customers. Such a practice would have a severe adverse impact on small local exchange carriers and their customers.

Q. WHAT WOULD THE SCTC REQUEST THAT THE COMMISSION DO IN THIS PROCEEDING?

A. The SCTC would respectfully request that the Commission deny Kentucky Data Link's application and require Kentucky Data Link to refile its application for a certificate, setting forth the particular geographic areas which Kentucky Data Link proposes to serve.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.

BEFORE
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OF
SOUTH CAROLINA

Docket No. 2008-16-C

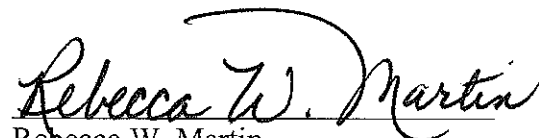
In Re: Application of Kentucky Data Link, Inc.)
For a Certificate of Public Convenience and)
Necessity to Provide Resold and Facilities-)
Based Local Exchange and Interexchange)
Telecommunications Services in the State of)
South Carolina and for Flexible Regulation)
_____)

**CERTIFICATE
OF SERVICE**

I, Rebecca W. Martin, do hereby certify that I have this date served one (1) copy of the prefiled Testimony of L. B. Spearman upon the following parties of record by causing said copy to be deposited with the United States Mail, first class postage prepaid to:

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March 17, 2008

Columbia, South Carolina